



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WESTINGHOUSE ELECTRIC & MANU-)
FACTURING COMPANY)

Appearances:

For Appellant: Livingston & Livingston, Attorneys

For Respondent: Chas. J. McColgan, Franchise Tax Commissio

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Statutes 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Westinghouse Electric & Manufacturing Company to a proposed assessment of an additional tax in the amount of \$308.01 for the year 1931 based on its return for the year ended December 31, 1930.

The sole problem involved in this appeal is whether the Commissioner acted properly in including in Appellant's income for the year 1930 the sum of \$657,752.17 received by Appellant as royalties from the use of United States Patents. The problem involved in this appeal is substantially the same as the problem involved in the Appeal of Petroleum Rectifying Company of California (decided by this Board on April 20, 1932). In that appeal we held that royalties from patents might properly be included in computing the net income to be used as the measure of the tax provided for in the Act, and this notwithstanding the holding in Long v. Rockwood, 277 U. S. 142 that royalties from United States patents might not be made the subject of direct state taxation. It is to be noted that since our decision in the Appeal of Petroleum Rectifying Company of California the Supreme Court of the United States has squarely overruled", its decision in the case of Long v. Rockwood. See Fox Film Corporation v. Doyal, 286 U. S. 122.

In view of our decision in the above mentioned appeal, and on the authority of Fox Film Corporation v. Doyal, we must hold that the Commissioner did not err in proposing the additional assessment in question in this appeal.

O R D E R

Pursuant to the views expressed in the opinion of the Board of Equalization on file in this proceeding, and good cause appearing therefor,

Appeal of Westinghouse Electric & Manufacturing Company

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J, **McColgan**, Franchise Tax Commissioner, in overruling the protest of Westinghouse Electric & Manufacturing Company, a corporation, to his proposed assessment of an additional tax of \$308.01 for the year 1931, based on return for the year ended December 31, 1930, be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of October, 1932, by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
Jno. C. Corbett, Member
H. G. **Cattell**, Member

ATTEST: Dixwell L. Pierce, Secretary